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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/180,374	04/12/1999	HEIKE RITTER	LEVER600X	6709

201 7590 06/16/2003

UNILEVER
PATENT DEPARTMENT
45 RIVER ROAD
EDGEWATER, NJ 07020

EXAMINER

PADEN, CAROLYN A

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 06/16/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/180,374

Applicant(s)

RITTER ET AL.

Examiner

Carolyn A Paden

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 May 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4 and 6-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 6-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 33.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 2, 4, 6 and 9 are rejected under 35 U.S.C. 102(e) as being anticipated by Moreau et al. for reasons of record.

Applicant urges that his definition of “organogel” includes an indication of “firmness.” This has been considered but is not persuasive. The reference to the texture of the product appears to be a property of the compound that is presented in a very indefinite manner and does not really provide a substantive distinction between the claims and the prior art. Further there is no objective measurement of the “firmness” so that one would be able to evaluate this description as a physical property of the “organogel.” Thus no criticality is attached to the description of the “Firmness” of the organogel relative to that of the Moreau patent. The defined chemical composition appears to be the same as that described in the Moreau patent. Applicant has amended the claims to include a wide

variation in the molar ratio of sterol to sterol ester. But given the percentage amounts of free sterol and sterol esters in Moreau at column 1, line 63, one could estimate the molar ratio of these components from the molecular weight of a typical phytosterol or phytosterol ester. Examiner has made her rough estimates using the molecular weight of sitosterol and sitosterol oleate and has found that the ratio of the phytosterol to phytosterol ester to be within the range that is set forth by the claims. Thus no criticality is seen in the inclusion of this feature.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4, 6, 9 and 11-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jandacek (1,413,102) in view of Moreau for reasons of record.

Applicant urges that his definition of "organogel" includes an indication of "firmness." This has been considered but is not persuasive. Jandacek teaches that the use of the oil product in peanut butter and mayonnaise and these food products all have a firmness that is greater

than the original oil. The reference to the texture of the product appears to be a property of the compound that is presented in a very indefinite manner and does not really provide a substantive distinction between the claims and the prior art. Further there is no objective measurement of the "firmness" so that one would be able to evaluate this description as a physical property of the "organogel." Thus no criticality is attached to the description of the "Firmness" of the organogel relative to that of the Moreau patent. The defined chemical composition appears to be the same as that described in the Moreau patent. Applicant has amended the claims to include a wide variation in the molar ratio of sterol to sterol ester. But given the percentage amounts of free sterol and sterol esters in Moreau at column 1, line 63, one could estimate the molar ratio of these components from the molecular weight of a typical phytosterol or phytosterol ester. Examiner has made her rough estimates using the molecular weight of sitosterol and sitosterol oleate and has found that the ratio of the phytosterol to phytosterol ester to be within the range that is set forth by the claims. Thus no criticality is seen in the inclusion of this feature.

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Moreau as applied to claims 1-4, 6 and 9-13 above, and further in view of Lansbergen or Sassen for reasons of record.

Applicants arguments are directed to Moreau and thus no additional arguments need to be addressed herein.

The rejection of claims 5 and 10 under 35 USC 112 has been dropped in response to applicant amendments to the claims.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jandacek in view of Moreau as applied to claims 1-4, 6 and 9-12 above, and further in view of Cherukuri for reasons of record.

Applicants arguments are directed to Moreau and thus no additional arguments need to be addressed herein.

Claim 14 is rejected under 35 U.S.C. 102(b) as being clearly anticipated by Carlsson et al for reasons of record.

Applicants arguments are directed to Moreau and thus no additional arguments need to be addressed herein.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn A Paden whose telephone number is 703-308-3294. The examiner can normally be reached on Monday to Friday from 7 am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano, can be reached on (703) 308-3959. The fax phone number for the organization where this application or proceeding is assigned is 703-305-7718.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

Carolyn Paden

CAROLYN PADEN 6-13-03
PRIMARY EXAMINER 1761